

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 540

Introduced by Senator Hertzberg

February 26, 2015

An act to amend and repeal Section 21004 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 540, as amended, Hertzberg. Franchise Tax Board: Taxpayers' Rights Advocate.

The Katz-Harris Taxpayers' Bill of Rights Act establishes the position of Taxpayers' Rights Advocate and provides specified protections for taxpayers for purposes of, among other things, determining their correct tax liability. Existing law, until January 1, 2016, authorizes the Taxpayers' Rights Advocate to abate penalties, fees, additions to tax, or interest attributable to error of the Franchise Tax Board, as specified. Existing law requires any relief granted in which the total reduction exceeds \$500, as adjusted, to be submitted to the executive officer of the board for concurrence, and limits the total relief granted to \$7,500, as adjusted.

This bill would, on and after January 1, 2016, instead authorize the ~~chief counsel~~ *Chief Counsel* of the Franchise Tax Board to abate penalties, fees, additions to tax, or interest attributable to error of the Franchise Tax Board, remove the limit on the amount of relief that may be granted and the adjustment provision relating to that amount, *and* specify the retention period for records of relief granted by the chief counsel, ~~and remove the sunset date, thus extending these provisions indefinitely.~~ *counsel.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21004 of the Revenue and Taxation Code,
2 as amended by Section 1 of Chapter 349 of the Statutes of 2012,
3 is amended to read:

4 21004. (a) The board shall establish the position of the
5 Taxpayers' Rights Advocate. The advocate or his or her designee
6 shall be responsible for coordinating resolution of taxpayer
7 complaints and problems, including any taxpayer complaints
8 regarding unsatisfactory treatment of taxpayers by board
9 employees. The advocate shall report directly to the executive
10 officer of the board.

11 (b) The advocate or his or her designee shall give highest priority
12 to reviewing and taking prompt and appropriate action, including
13 staying actions where taxpayers have suffered or will suffer
14 irreparable loss as the result of board action. Applicable statutes
15 of limitation shall be tolled during the pendency of a stay. Any
16 penalties and interest which would otherwise accrue shall not be
17 affected by the granting of a stay.

18 (c) (1) On and after January 1, ~~2013, and before January 1,~~
19 ~~2016, the advocate may review any application for~~ *Chief Counsel*
20 *of the Franchise Tax Board may provide* relief pursuant to this
21 subdivision and abate any penalties, fees, additions to tax, or
22 interest assessed ~~on a taxpayer, if it is determined by the advocate~~
23 *Chief Counsel of the Franchise Tax Board* that the penalties, fees,
24 additions to tax, or interest that have been assessed, or any part
25 thereof, is attributable to any of the following:

26 (A) Erroneous action or erroneous inaction by the board in
27 processing documents filed or payments made by taxpayers.

28 (B) Unreasonable delay caused by the board.

29 (C) Erroneous written advice that does not qualify for relief
30 under Section 21012.

31 (2) Relief may be granted pursuant to this subdivision only if
32 no significant aspect of that error or delay can be attributed to the
33 taxpayer involved and relief is not available under any other
34 provision of this part, Part 10 (commencing with Section 17001),
35 *Part 10.2 (commencing with Section 18401), or Part 11*

(commencing with Section 23001), including any relief granted under any regulation or other administrative pronouncement of the board.

(3) (A) ~~(i)~~ Any relief granted pursuant to this subdivision in which the total reduction in penalties, fees, additions to tax, or interest exceeds five hundred dollars (\$500) shall be submitted to the executive officer for concurrence.

~~(ii) The total relief granted pursuant to this subdivision may not exceed seven thousand five hundred dollars (\$7,500).~~

(B) Whenever relief is granted under this subdivision, there shall be placed on file *for at least one year* in the office of the executive officer of the board a public record with respect to that relief. The public record shall include the following:

(i) The taxpayer's name.

(ii) The total amount involved.

(iii) The amount payable or refundable due to the error or delay.

(iv) A summary of why the relief is warranted.

(4) A refund may be paid as a result of relief granted under this subdivision only if the applicable statute of limitations, with respect to filing a claim for refund, remains open as of the date that the basis for providing relief, as authorized in subparagraphs (A) to (C), inclusive, of paragraph (1), ~~as reflected in a written communication received by the advocate: determined by the board.~~

~~(d) (1) On and after January 1, 2016, the chief counsel of the board may provide relief pursuant to this subdivision and abate any penalties, fees, additions to tax, or interest assessed, if it is determined by the chief counsel that the penalties, fees, additions to tax, or interest that have been assessed, or any part thereof, is attributable to any of the following:~~

~~(A) Erroneous action or erroneous inaction by the board in processing documents filed or payments made by taxpayers.~~

~~(B) Unreasonable delay caused by the board.~~

~~(C) Erroneous written advice that does not qualify for relief under Section 21012.~~

~~(2) Relief may be granted pursuant to this subdivision only if no significant aspect of that error or delay can be attributed to the taxpayer involved and relief is not available under any other provision of this part, Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001), including any relief granted~~

~~1 under any regulation or other administrative pronouncement of
2 the board.~~

~~3 (3) (A) Any relief granted pursuant to this subdivision in which
4 the total reduction in penalties, fees, additions to tax, or interest
5 exceeds five hundred dollars (\$500) shall be submitted to the
6 executive officer for concurrence.~~

~~7 (B) Whenever relief is granted under this subdivision, there
8 shall be placed on file for at least one year in the office of the
9 executive officer of the board a public record with respect to that
10 relief. The public record shall include the following:~~

~~11 (i) The taxpayer's name.~~

~~12 (ii) The total amount involved.~~

~~13 (iii) The amount payable or refundable due to the error or delay.~~

~~14 (iv) A summary of why the relief is warranted.~~

~~15 (4) A refund may be paid as a result of relief granted under this
16 subdivision only if the applicable statute of limitations, with respect
17 to filing a claim for refund, remains open as of the date that the
18 basis for providing relief, as authorized in subparagraphs (A) to
19 (C), inclusive, of paragraph (1), as determined by the board.~~

~~20 (e) No other entity may participate in the grant or denial of relief
21 pursuant to this section.~~

~~22 (f) On January 1 of each calendar year beginning on or after
23 January 1, 2009, and before January 1, 2016, the board shall
24 increase the amount specified in subparagraph (A) of paragraph
25 (3) of subdivision (c) to the amount computed under this
26 subdivision. That adjustment shall be made as follows:~~

~~27 (1) The Department of Industrial Relations shall transmit
28 annually to the board the percentage change in the California
29 Consumer Price Index for All Urban Consumers, as modified for
30 rental equivalent home ownership for all items, from June of the
31 prior calendar year to June of the current calendar year, no later
32 than August 1 of the current calendar year.~~

~~33 (2) The board shall then:~~

~~34 (A) Compute the percentage change in the California Consumer
35 Price Index for All Urban Consumers from the later of June 2008
36 or June of the calendar year prior to the last increase in the amount
37 specified in paragraph (1).~~

~~38 (B) Compute the inflation adjustment factor by adding 100
39 percent to the percentage change so computed, and converting the
40 resulting percentage to the decimal equivalent.~~

1 ~~(C) Multiply the amount specified in paragraph (1) for the~~
2 ~~immediately preceding calendar year, as adjusted under this~~
3 ~~subparagraph, by the inflation adjustment factor determined in~~
4 ~~subparagraph (B), and round off the resulting product to the nearest~~
5 ~~one hundred dollars (\$100).~~

6 *(d) No other entity may participate in the grant or denial of*
7 *relief pursuant to this section.*

8 ~~(g)~~

9 *(e) Notwithstanding any other law or rule of law, all*
10 *determinations made under paragraph (1) of subdivision (c) and*
11 *paragraph (1) of subdivision (d) shall not be subject to review in*
12 *any administrative or judicial proceeding.*

13 *(f) (1) The amendments made by Section 1 of Chapter 349 of*
14 *the Statutes of 2012 shall become operative on January 1, 2013.*

15 *(2) The amendments made by the act adding this paragraph*
16 *shall become operative on January 1, 2016.*

17 SEC. 2. Section 21004 of the Revenue and Taxation Code, as
18 added by Section 2 of Chapter 349 of the Statutes of 2012, is
19 repealed.